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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,802	07/16/2003	David Haines	21534-002CIP	1462
30623	7590	07/25/2005	EXAMINER	
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C. ONE FINANCIAL CENTER BOSTON, MA 02111			FAY, ZOHREH A	
			ART UNIT	PAPER NUMBER
			1618	

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/621,802

Applicant(s)

HAINES ET AL.

Examiner

Zohreh A. Fay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-20,22-34 and 36-41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-20,22-34 and 36-41 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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Claims 1-6, 8-20, 22-34 and 36-41 are presented for examination.

The newly submitted claims 42-106 are withdrawn from consideration. If such claims were presented originally they would have been subjected to a restriction requirement.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-6, 8-20, 22-34 and 36-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorsek (6,103,756) and Guivar' H (20020002154) for the reasons set forth on pages 2 and 3 of the office action of November 1, 2004 and the following reasons.

Guivarc'H teaches the use of omega-3 polyunsaturated fatty acids for the treatment of inflammatory conditions. See the abstract, page 2 section 0005 and the claims. The above reference makes clear that the claimed omega-3 polyunsaturated fatty acids have anti-inflammatory activity. Treatment of ophthalmic inflammation is taught on page 2 section 0005 of the above reference. It would have been obvious to a

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person skilled in the art to incorporate an omega-3 fatty acid into the teachings of Gorsek, considering that the secondary reference teaches the anti-inflammatory properties of omega-3 fatty acids. One skilled in the art would have been motivated to combine the teachings of the above references, since one relates to the use of carotenoids in general in combination with a polyphenol, a glutathione precursor, a vitamin antioxidant and a lipoic acid in a pharmaceutical formulation for the treatment of ophthalmic inflammatory disorders, and the other relates to the use of omega-3 fatty acids as anti-inflammatory agents being used in ophthalmic field. It is generally considered prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a composition which is to be used for the very same purpose. The idea for combining them flows logically from their having being used individually in the prior art. Applicant has presented no evidence to establish the unexpected or unobvious nature of the claimed invention, and as such, claims 1-6, 8-20, 22-34 and 36-41 are properly rejected under 35 U.S.C. 103.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh A. Fay whose telephone number is (571) 272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Z.F

